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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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10 MELVIN R. ARRANT,

11 Plaintiff,

12 v.

13 G. RICHARDSON, et al.,

14 Defendant.
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NO. CV 17-393-JVS (AGR)

ORDER ACCEPTING FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

16 Pursuant to 28 U.S.C. § 636, the Court has reviewed the complaint, the
17 records on file, and the Report and Recommendation of the United States Magistrate
18 Judge. The Magistrate Judge recommends that Defendants' motion for summary
19 judgment based on failure to exhaust administrative remedies be denied with respect
20 to Defendant Richardson and granted with respect to Defendant Soisuvann.
21 Defendant Richardson and Plaintiff have each filed objections. The Court has
22 engaged in a *de novo* review of those portions of the Report to which objections were
23 made. The Court accepts the findings and recommendations of the Magistrate
24 Judge.

25 Defendant Richardson objects to the Magistrate Judge's conclusion that
26 Plaintiff's July 26, 2015 grievance, read together with his response to the appeal
27 office's "screen out" of that grievance for insufficient specificity, sufficiently put the
28 prison on notice of his retaliation claim against Richardson. The Report found that

1 although Plaintiff's grievance predated Richardson's issuance of a "falsified" Rules
2 Violation Report ("RVR"), the grievance mentioned Richardson's threats to fire
3 inmates who complained about his racial slurs and sexual harassment, and Plaintiff's
4 response to the "screen out" letter stated that Richardson issued him an RVR "to get
5 [Plaintiff] fired for reporting his conduct." (Report at 11.) Although the response did
6 not say that the RVR was "falsified" and erroneously gave its date as July 20, 2015
7 rather than July 30, 2015, there is no merit to Richardson's argument that these
8 deficiencies precluded prison officials from realizing that Plaintiff claimed that
9 Richardson issued the RVR in retaliation for his July 26, 2015 grievance. See *Griffin*
10 *v. Arpaio*, 557 F.3d 1117, 1120 (9th Cir. 2009) (grievance must "alert[] the prison to
11 the nature of the wrong for which redress is sought").

12 Richardson further argues that the Report's reliance on Plaintiff's response to
13 the "screen out" letter runs afoul of the Supreme Court's holding that the Prison
14 Litigation Reform Act requires "proper exhaustion" in accordance with the agency's
15 procedural rules. (Richardson Obj. at 5, citing *Woodford v. Ngo*, 548 U.S. 81, 83-84
16 (2006)). He cites 15 Cal. Code Regs. § 3084.1(b), which provides that
17 "administrative remedies shall not be considered exhausted relative to any new issue,
18 information, or person later named by the appellant that was not included in the
19 originally submitted CDCR Form 602." Richardson's argument is unpersuasive. The
20 July 26, 2015 grievance mentioned potential retaliation by Richardson, and Plaintiff
21 added the information about the RVR after the appeals office rejected his grievance
22 for insufficient specificity and before it was accepted at the first level. This was not a
23 new issue or new information within the meaning of § 3084.1(b).

24 Plaintiff objects to the Magistrate Judge's conclusion that he did not exhaust
25 his retaliation claim against Defendant Soisuvann, who allegedly collaborated with
26 Richardson on the retaliatory RVR and signed it as a reviewing supervisor. He points
27 out that his July 26, 2015 grievance requested that he not be retaliated against for
28 submitting it. (Plaintiff Obj. at 3.) As discussed in the Report, that grievance

1 concerned Richardson's misconduct and threats to retaliate against inmates who
2 complained about it. Soisuvorn was not mentioned. Plaintiff did not file a grievance
3 regarding Soisuvorn after learning of the RVR, and did not mention Soisuvorn in his
4 responses to the "screen outs" of the July 26, 2015 grievance. The Magistrate Judge
5 properly found that the grievance did not give the prison notice of Plaintiff's retaliation
6 claim against Soisuvorn.

7 Plaintiff also argues that after his disciplinary hearing there was "nothing to
8 grieve." (Plaintiff Obj. at 5.) On August 8, 2015, Plaintiff was acquitted of the
9 charged disciplinary offense and found guilty of a lesser administrative offense, but
10 that lesser charge was dismissed and reported only as custodial counseling.
11 (Surreply, Ex. D.) A retaliation claim asserts a different harm from a claim
12 challenging a disciplinary punishment. See *Hines v. Gomez*, 108 F.3d 265, 269 (9th
13 Cir. 1997); see also *Brodheim v. Cry*, 584 F.3d 1262, 1270 (9th Cir. 2009) (threat of
14 harm may support retaliation claim even if not carried out). Plaintiff was obliged to
15 exhaust his retaliation claim against Soisuvorn regardless of the outcome of his
16 disciplinary hearing.

17 Richardson's and Plaintiff's other arguments are without merit.

18 IT IS ORDERED that (1) Defendant Richardson's motion for summary
19 judgment is denied; and (2) Defendant Soisuvorn's motion for summary judgment is
20 granted and the claims against him are dismissed, without prejudice, for failure to
21 exhaust administrative remedies.

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24 DATED: January 28, 2019



JAMES V. SELNA
United States District Judge